



**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF VETERANS SERVICES
1970 Roanoke Boulevard, Bldg. 77
Salem, Virginia 24153**

REQUEST FOR PROPOSAL # 912-08002

TITLE: ANNUAL MEDICARE AND VIRGINIA MEDICAID COST REPORT

**ISSUE DATE: MARCH 24, 2008
SEALED PROPOSALS DUE BY: APRIL 30, 2008**

**Robyn Wright
Procurement Officer
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E-mail: robyn.wright@dvs.virginia.gov**

REQUEST FOR PROPOSAL

Issue Date: March 24, 2008 **RFP#:** 912-08002

Title: Annual Medicare and Virginia Medicaid Cost Report

Commodity Code: 94611

Issuing Agency: Virginia Department of Veterans Services
ATTN: Purchasing Office, Building 77
1970 Roanoke Boulevard
Salem, Virginia 24153

Using Agencies: Virginia Veterans Care Center
4550 Shenandoah Ave., NW
Roanoke, Virginia 24017

Sitter & Barfoot Veterans Care Center
1601 Broad Rock Blvd
Richmond, Virginia 23224

Period Of Contract: From May 1, 2008 through April 30, 2009. (renewable)

Sealed proposals will be received until **3:00 PM, April 30, 2008** for furnishing services described herein. All inquiries for information should be directed to: **Patricia Hutchinson, Virginia Department of Veterans Services, Phone (540) 857-6390**. IF PROPOSALS ARE MAILED, **SEND DIRECTLY TO ISSUING AGENCY SHOWN ABOVE**. IF PROPOSALS ARE HAND DELIVERED OR MAILED FOR SPECIAL DELIVERY TO OUR OFFICE, **DELIVER TO: Virginia Department of Veterans Services, Purchasing Office, Bldg 77, 1970 Roanoke Boulevard Salem, VA 24153**. Envelopes should be marked with the RFP number, opening date and time identified above. If a proposal is not properly identified, the offeror takes the risk that the envelope may be inadvertently opened and the information compromised which may cause the offer to be disqualified. It is strictly the offeror's responsibility to ensure that proposal documents are **received** in the Department of Veterans Services Purchasing Office by the date and time stipulated above. Proposals not received by the stated time will be returned unopened and will not be considered. Proposals transmitted by fax will not be accepted.

Submit Comments Questions	Interested parties may submit written comments or questions on any aspect of this RFP on or before 3:00 p.m., Tuesday, April 22, 2008. Please submit your comments and questions to Robyn J. Wright by email: robyn.wright@dvs.virginia.gov No other questions will be responded to after Tuesday, April 22, 2008 deadline.
Copies of RFP and Answers to submitted Questions	May be obtained at www.dvs.virginia.gov (Procurement)

IN COMPLIANCE WITH THIS REQUEST FOR PROPOSALS AND TO ALL THE CONDITIONS IMPOSED HEREIN, THE UNDERSIGNED OFFERS AND AGREES TO FURNISH SERVICES IN ACCORDANCE WITH THE ATTACHED SIGNED PROPOSAL OR AS MUTUALLY AGREED UPON BY SUBSEQUENT NEGOTIATION. I CERTIFY THAT I AM AN AUTHORIZED OFFICIAL OF THE ORGANIZATION SUBMITTING THIS PROPOSAL:

Offer Name and Address	Date:	
	Signature:	
	Printed Name:	
	Title:	
	Phone:	
FEI/FIN Number ¹ :	Fax:	
e-mail:		
Are You A Registered eVA Procurement Vendor? <input type="checkbox"/> Yes Date Completed: _____ <input type="checkbox"/> No		
Are You A Certified Small, Woman, or Minority Vendor? <input type="checkbox"/> Yes Certification No.: _____ <input type="checkbox"/> No		

¹ Contractor is REQUIRED to provide a Federal Employer Identification Number, a Federal Identification Number or, in the absence of these numbers, his Social Security Number. This information is being collected for IRS reporting.

This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

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Attachment A: Reference Data Sheet

Attachment B: Business Associate Contract

I. PURPOSE:

The purpose of this Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through negotiations for the Annual Medicare and Virginia Medicaid Cost Reports for entities of the Virginia Department of Veterans Services (DVS), agencies of the Commonwealth of Virginia. These entities include the Virginia Veterans Care Center (VVCC) and the Sitter & Barfoot Veterans Care Center (SBVCC).

II. BACKGROUND:

The Department of Veterans Services (DVS) is a state agency tasked with serving as an advocate for the more than 750,000 Veterans of the Commonwealth of Virginia and their families and survivors. DVS is organized into four (4) service delivery branches – veterans’ benefits, veterans’ cemeteries, veterans’ education, and veterans care centers – and an administrative section. Integral components of the Department of Veterans Services’ team are the three board-type entities – the Boards of Veterans Services, the Joint Leadership Council of Veterans Services Organizations, and the Veterans Services Foundation, that work collaboratively to support the effective delivery of services to Virginia’s veterans.

The Virginia Veterans Care Center (VVCC), located adjacent to the Salem VA Medical Center, in Salem, Virginia, is a 240-bed facility that provides long-term skilled care (180-bed) and assisted living (60-bed) services to veterans of the armed forces. The Sitter & Barfoot Veterans Care Center (SBVCC), located adjacent to the McGuire VA Medical Center in Richmond, Virginia, is a 160-bed facility that provides long-term skilled care to veterans of the armed forces.

As healthcare facilities, both are required to file a Medicare cost report. Both VVCC and SBVCC endeavor to procure the services of a qualified Accountant to provide Annual Cost Reporting Services for both facilities.

III. STATEMENT OF NEEDS:

The service shall include the furnishing of all labor, travel and transportation, equipment, materials, supplies, and supervision to perform accounting services for the Annual Medicare and Virginia Medicaid Cost Reports during the term of this contract. The offeror must be able to demonstrate a minimum of two (2) years experience on cost reporting as described below. The Accountant shall be appropriately certified as a Certified Public Accountant (CPA) to perform related work.

A. Cost Reporting Requirements:

1. Service shall be performed on a schedule agreed upon by the VVCC and SBVCC facility Administrators and offeror.
2. The offeror shall be appropriately certified to perform related work. Certification must be maintained while rendering services for the VVCC and SBVCC. A copy of required certification must be submitted with the proposal and updated in the DVS procurement office as warranted.
3. Offeror shall furnish and maintain professional liability insurance while rendering services for the VVCC and SBVCC. A copy of insurance certificate must be submitted with the proposal and updated in the DVS procurement office as warranted.
4. The offeror shall provide services necessary to affect a comprehensive Annual Cost Report for Medicare and Virginia Medicaid on behalf of the VVCC and the SBVCC.
5. Services provided shall be in accordance with accepted professional standards, appropriate

federal and state guidelines and according to the Code of Ethics as set forth by certifying board for public accountants.

6. Complete and acceptable reports shall be prepared, reviewed and filed to the appropriate agency by the designated deadline.
7. The offeror shall prepare, review and submit the Virginia rate review council annual historical filing to the appropriate agency by the designated deadline.
8. The offeror may be required to meet periodically with the Facility Administrators.
9. The offeror shall provide services as an independent contractor, and not as an employee of the Department of Veterans Services or the Commonwealth of Virginia.
10. As part of the contract award, the offeror shall be responsible for administering and ensuring compliance with Health Insurance Portability and Accountability Act of 1996 (HIPAA). The offeror shall be required to sign a Business Associate Contract (Attachment B).
11. The offeror shall submit a minimum of three (3) references from existing customers with comparable accounting services. Supply names, addresses, phone numbers and e-mail addresses.
12. Upon award of the contract, the offeror shall meet with the VVCC and SBVCC facility administrators within ten (10) days of award of contract to schedule services. All services shall be performed during normal working hours. The work schedule may be adjusted as agreed upon by the facilities and the offeror.

B. Contractor's Mandatory Requirements:

1. Provide unlimited as requested on-site (DVS) reviews with personnel in regard to:
 - 1.1 The preliminary settlement and to assist the DVS with investigation of specific questions/issues about each facility's reports;
 - 1.2 Revisions to draft settlements based on the DVS's internal review of data after the preliminary report has been received from the facilities;
 - 1.3 Revisions to settlements based on the DVS's internal review of data after the original report has been submitted to the Intermediary;
 - 1.4 Revisions based on the findings of the Commonwealth's Auditor of Public Accounts; and
 - 1.5 Revisions based on the fiscal intermediary's pre-tentative adjustments.
2. Production of the final Medicare and Medicaid cost reports for submission to United Services, LLC (Medicare Intermediary) and the Department of Medical Assistance Services (Medicaid Intermediary) meeting deadline requirements established by the Purchasing Agency, and not necessarily the Program intermediary. The Contractor shall be required to provide an unlimited number of reruns, at no extra cost, until the report is finalized. Such reruns must be received by DVS Central Office within twenty-four (24) hours of the provision of revised information. In addition, the contractor must be available at a later date for defending, consulting, and revising reports, should such reports be subject to a CMS audit, at no additional charge.
3. The Contractor shall be prepared work on-site at facilities and DVS as are considered necessary by the Purchasing Agency to complete this project. The Contractor will be responsible for working with staff of the Purchasing Agency in order to collect the necessary data, arrange

travel, and provide for any additional support services.

C. Facilities' Responsibilities:

Each care center shall provide supporting documentation for the preparation of the cost reports. Documentation shall include and is not limited to detailed trial balance and other pertinent statistical data. The care centers will accept responsibility for the accuracy and completeness of the information provided for the report.

IV. COMPLIANCE WITH HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA):

In the course of carrying out contractual services, the Contractor and its employees will be in areas occupied by patients of the veterans care centers where they could possibly be subject to patient-related information either directly or indirectly. Any information regarding any patient must be held in strict confidence. By signature on this Agreement and the Business Associate Agreement (Attachment B), the contractor agrees to comply with all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and, in the performance of this contract (agreement) will:

- Not use or further disclose protected health information (PHI) other than as permitted or required by the terms of this contract or as required by law;
- Use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by the contract;
- Report to the DVS any use or disclosure of PHI not provided for by this Contract (Agreement);
- Mitigate, to the extent practicable, any harmful effect that is known to the contractor of a use or disclosure of PHI by the Contractor in violation of the requirements of this contract.
- Impose the same requirements and restrictions on its subcontractors and agents;
- Provide access, at the request of the DVS, and in the time and manner designated by the DVS, to PHI in a Designated Record Set, to the DVS or, as directed by the DVS, to an individual in order to meet HIPAA requirements.
- Make available PHI for amendment and incorporate any amendments to PHI;
- Document and provide to DVS information relating to disclosures of PHI as required for the DVS to respond to a request by an individual for an accounting of disclosures of PHI in accordance with the HIPAA Privacy Rule;
- Make its internal practices, books, and records relating to use and disclosure of PHI available to the Secretary of the U.S. Department of Health and Human Services Secretary for the purposes of determining compliance with the HIPAA Privacy Rule;

At termination of the contract, if feasible, return or destroy all PHI received from, created or received by the Contractor on behalf of the Contracting Agency (DVS) that the business associate still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

V. PROPOSAL PREPARATION AND SUBMISSION:

Proposals should be as thorough and detailed as possible so that the Virginia Department of Veterans Services (DVS) may properly evaluate the offerors' capabilities to provide the required service. Offerors are required to submit the following items as a complete proposal:

A. General Requirements:

1. In order to be considered for selection, offerors must submit a completed response of this RFP. ONE (1) ORIGINAL, Clearly labeled, and five (5) copies and submitted to:

**The Department of Veterans Services
Procurement Office, Bldg. 77
1970 Roanoke Boulevard
Salem, VA 24153**

Reference the Opening Date, Hour, and the RFP number in the lower left-hand corner of the returned envelope or package. The offeror shall make no other distribution of the proposal.

2. Proposal Preparation:
 - 2.1 An authorized representative of the offeror shall sign the proposal. All information requested should be submitted. Failure to submit all information requested may result in DVS requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals, which are substantially incomplete or lack of key information may be rejected by DVS at its discretion. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
 - 2.2 Proposal should be prepared simply and economically providing a straight forward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on the completeness and clarity of content.
 - 2.3 Proposal should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. If a response covers more than one page, the paragraph number and sub letter should be repeated at the top of the next page. The proposal should contain a table of contents, which cross references the RFP requirements. Information which the offeror desires to present, that does not fall within any of the requirements of the RFP should be inserted at an appropriate place and be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.
 - 2.4 Each copy of the proposal should be bound in a single volume where practical. All documentation submitted with the proposal should be bound in that single volume.
 - 2.5 Ownership of all data, material and documentation originated and prepared for the Virginia Department of Veterans Services (DVS) pursuant to this RFP shall belong exclusively to DVS and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act. However, to prevent disclosure, the offeror must invoke the protection of the *Code of Virginia* § 2.2-4342F, in writing, prior to or upon submission of the data

or other materials, and must identify that data or other materials to be protected and state the reasons why protection is necessary. The classification of an entire proposal or prices as proprietary or trade secrets is not acceptable and may result in the rejection of the proposal.

- 2.6 Oral presentation: Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to DVS. This will provide an opportunity for the offeror to clarify or elaborate on the proposal but will in no way change the original proposal. The DVS will schedule the time and location of these presentations. Oral presentations are an option of DVS and may not be conducted. Therefore, proposals should be complete.

3. Specific Requirements:

- 3.1 Proposals should be as thorough and detailed as possible so that DVS may properly evaluate your capabilities to provide the required service. Offerors are required to submit the following information/items as a complete proposal.
- 3.2 The return of the RFP cover sheet, signed by an authorized representative and all addendums, acknowledgements, if any, signed and filled out as required.
- 3.3 Reference Data Sheet (Attachment A) included as an attachment to the RFP, and other specific items or data requested in the RFP, such as copies of certifications and insurance.
- 3.4 A written narrative statement to include:
- 3.4.1 Experience in providing the goods/services described herein.
 - 3.4.2 Names, qualifications and experience of personnel to be assigned to the project.
 - 3.4.3 Resumes of staff to be assigned to the project.

- B.** Letter of Intent: The offeror is required to provide the Virginia Department of Veterans Services with a cover letter addressed to Patricia Hutchinson, Virginia Department of Veterans Services, Building 77, 1970 Roanoke Boulevard, Salem, Virginia 24153, signed by an officer or principal of the firm. The letter must contain a commitment to provide the services described herein with the personnel specified in the qualifications submission.
- C.** Statement of Experience: The offeror is required to provide evidence of experience in the preparation of nursing home Medicare and Medicaid cost report.
- D.** Firm Qualifications: Please supply the Virginia Department of Veterans Services with a brief history of the firm. This should include the firm's size, areas of expertise, and any other pertinent information.
- E.** Insurance: The offeror shall include proof that the firm carries professional liability and commercial general liability insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work as per the amounts listed in the General Terms and Conditions of this solicitation.

VI. EVALUATION AND AWARD CRITERIA:

- A.** Each proposal and subsequent interviews will be evaluated by a chosen committee to measure the extent to which it meets the following criteria:
1. Firm and team experience with Medicare and Virginia Medicaid cost reporting concerning state government, non-profit and especially Departments of Veterans Services/Affairs. **(30)**
 2. Firms' ability to submit a minimum of three (3) references of similar projects. **(15)**
 3. Firms' understanding of and approach to the project as demonstrated in the proposal, the interview, and presentation of materials. **(15)**
 4. Quality of the proposal/interview in terms of content, organization, and presentation. **(15)**
 5. Small, Women-Owned and Minority Business utilization. **(25)**
- B. AWARD:** The Department of Veterans Services shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. At the discussion stage the public body may discuss non-binding estimates of total project costs, including, but not limited to, life cycle costing, and where appropriate, non-binding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of the informal interviews, on the basis of evaluation factors published in the Request for Proposals and all information developed in the selection process to this point, the purchasing agency shall select, in the order of preference, two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the purchasing agency can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on, until such a contract can be negotiated at a fair and reasonable price. Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

VII. GENERAL TERMS AND CONDITIONS:

- A. **VENDOR'S MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia Vendor's Manual and any revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review on the Internet at www.dgs.virginia.gov/dps under "Manuals."
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state, and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their bids, Offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343-1E).

In every Contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
 2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Offeror, Supplier, Manufacturer, or Subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their proposals, the offerors certify that they do not and will not, during the performance of this contract, employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting proposals on contracts for the type of services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

- G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular services acquired by the Commonwealth of Virginia under said contract.

H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR RFP'S:**

Failure to submit a proposal on the official state form provided for that purpose shall be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case-by-case basis, in its sole discretion, whether to reject such a proposal.

- I. **CLARIFICATION OF TERMS:** If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact Robyn Wright at 540-375-4360 no later than five (5) working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the Contract Officer.

J. **PAYMENT:**

1. **To Prime Contractor:**

- a. Invoices for services rendered and accepted shall be submitted by the contractor directly to the payment address shown below:

Department of Veterans Services
Attention: Accounts Payable
1970 Roanoke Boulevard, Building 77
Salem, Virginia 24153

All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges, which appear to be unreasonable, will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges, which are not in dispute (*Code of Virginia § 2.2-4363*).

2. **To Subcontractors:**

- a. A contractor awarded a contract under this solicitation is hereby obligated:
1. To pay the Subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 2. To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment

and the reason.

- b. The contractor is obligated to pay the Subcontractor(s) interest at the rate of one percent (1%) per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a Subcontractor may not be construed to be an obligation of the Commonwealth.
 3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency, or other appropriate penalties may be assessed in lieu of withholding such payment.
- K. PRECEDENCE OF TERMS:** The following General Terms and Conditions, *VENDORS MANUAL*, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- L. QUALIFICATIONS OF OFFERORS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services contemplated therein.
- M. TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specifications.
- N. ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. CHANGES TO THE CONTRACT:** Changes can be made to the contract in any one of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The purchasing agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the purchasing agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the purchasing agency's right to audit the contractors records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and to keep a record on all costs incurred and savings realized. A mark-up for overhead and profit may be allowed if provided by the contract. The same mark-up shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the purchasing agency with all vouchers and records of expenses incurred and savings realized. The purchasing agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the

purchasing agency within thirty (30) days from the date of receipt of the written order from the purchasing agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provision of the Commonwealth of Virginia's Vendor's Manual. Neither the existence of a claim nor a dispute resolution process, litigation, or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the purchasing agency or with the performance of the contract generally.

- P. DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies, which the Commonwealth may have.
- Q. INSURANCE:** By signing and submitting a proposal under this solicitation, the offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The offeror further certifies that the contractor and any subcontractors will maintain this insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

During the period of the contract the Commonwealth reserves the right to require the contractor to furnish certificate(s) of insurance for the coverage required.

MINIMUM INSURANCE COVERAGE AND LIMITS REQUIRED:

1. Worker's Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their worker's compensation requirement under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
 2. Employers Liability - \$100,000.
 3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
 4. Automobile Liability - \$1,000,000 per occurrence.
- R. ANNOUNCEMENT OF AWARD:** upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site (www.eva.virginia.gov) for a minimum of 10 days.
- S. DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during performance of the contract.

- T. NONDISCRIMINATION OF CONTRACTORS:** A Offeror or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the offeror employs ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objections, access to equivalent goods, services, or disbursements from an alternative provided.

- U. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION:** The eVA Internet electronic procurement solution, web site portal www.eva.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. It is preferred that vendors desiring to provide goods and/or services to the Commonwealth participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service.
- a. eVA Basic Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
 - b. eVA Premium Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic e-mail or fax notification of solicitations and amendments.
 - c. For order issued July 1, 2006 and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Woman-Owned Businesses: 1%, capped at \$500 per order.
 - (ii) DMBE-certified Minority-Owned Businesses: 1%, capped at \$500 per order.
 - (iii) Other Businesses not specified in (i) or (ii) above: 1%, capped at \$1,500 per order.

VIII. **SPECIAL TERMS AND CONDITIONS:**

- A. **ADVERTISING:** In the event a contract is awarded for services resulting from this proposal no indication of such sales or services to the agency will be used in product literature or advertising. The contractor shall not state in any of the advertising or product literature that the Commonwealth of Virginia or any agency or institution of the Commonwealth has purchased or uses its products or services.
- B. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or State auditors shall have full access to and the right to examine any of said materials during said period.
- C. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- D. **CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon sixty (60) days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon sixty (60) days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- E. **IDENTIFICATION OF PROPOSAL ENVELOPE:** If a special envelope is not furnished, or if return in the special envelope is not possible, the signed proposal should be returned in a separate envelope or package, sealed and identified as follows:

From: _____	_____	_____
Name of Offeror	Due Date	Time
_____	_____	_____
Street or Box Number	RFP No.	
_____	_____	
City, State, Zip Code	RFP Title	

Name of Contract/Purchase Officer or Buyer _____

The envelope should be addressed as directed on Page 1 of the solicitation.

If a proposal not contained in the special envelope is mailed, the offeror takes the risk that the envelope, even if marked as

described above, may be inadvertently opened and the information compromised which may cause the proposal to be disqualified. Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

- F. **MINORITY/WOMEN OWNED BUSINESSES SUBCONTRACTING AND REPORTING:** Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such business to small, women, and/or minority-owned (SWAM) businesses. If SWAM subcontractors are used, the prime contractor agrees to report the use of SWAM subcontractors by providing the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, category type (small, women, or minority-owned), and type of product/services provided.
- G. **NON-MANDATORY USE:** nothing herein, or in any subsequent agreement, shall prevent the agency from recruitment, selection and/or employment through procedures normally utilized to fill physician positions.
- H. **PRIME CONTRACTOR RESPONSIBILITIES:** The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.
- I. **REFERENCES:** Offerors shall provide a list of at least three (3) references where similar services have been provided. Each reference shall include the name of the organization, the complete mailing address, the name of the contact person and telephone number. (Attachment A - Reference Data Sheet).
- J. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth for a period of **four (4) successive one (1) year periods** under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately ninety (90) days prior to the expiration date of each contract period.
1. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by no more than the percentage increase/decrease of the service group **"Services"** category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available. (For recent Consumer Price Index statistics, contact the Bureau of Labor Statistics at their website <http://stats.bls.gov/news.release/cpi.toc.htm> or by telephone at 202-691-7000.)
 2. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by no more than the percentage increase/decrease of the service group **"Services"** category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available. (For recent Consumer Price Index statistics, contact the Bureau of Labor Statistics at their website <http://stats.bls.gov/news.release/cpi.toc.htm> or by telephone at 202-691-7000.)
- K. **WORK SITE DAMAGES:** Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the Commonwealth's satisfaction at the contractor's expense.
- L. **eVA Business-To-Government Contracts and Orders:** The contract will result in one(1) purchase order with the eVA transaction fee specified below assessed for each order.
1. For orders issued July 1, 2006 and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Women-owned Businesses: 1%, capped at \$500 per order.
 - (ii) DMBE-certified Minority-owned Businesses: 1%, capped at \$500 per order.
 - (iii) Other Businesses not specified in (i) or (ii) above: 1%, capped at \$1,500 per order.

The eVA transaction fee will be assessed approximately 30 days after each purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.

Internet electronic procurement solution, web site portal www.eva.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

It is preferred that vendors desiring to provide goods and/or services to the Commonwealth participate in the eVA Internet e-procurement solution.

IX. METHOD OF PAYMENT:

The Contractor shall be paid using one of the following two methods:

1. GE MasterCard: At the time of order placement, facilities may authorize payment by GE MasterCard Corporate Purchasing Card. Due to the agreement vendors have with GE MasterCard, no additional fees for use will be permitted.
2. Invoices: Payment will be made, Net 30, after satisfactory performance of the contract in accordance with all of the provisions thereof and upon receipt of a properly completed invoice. The facility shall make monthly payments to the Contractor on the basis of payment during the monthly following the month in which the service was rendered. The facility reserves the right to withhold any and all payments or portions thereof for contractor's failure to perform in accordance with the provisions of the contract or any modification thereof.

Invoices shall be submitted by the Contractor to the facility within 30 days of services rendered. The invoices shall provide the eVA purchase order number and contain information that was provided on the estimate to the VVCC Representative. The Facility Representative may also request a copy of the daily work order to accompany the invoices sent to facility.

X. ATTACHMENTS:

Attachment A:	Reference Data Sheet
Attachment B:	Business Associate Contract

ATTACHMENT A

REFERENCE DATA SHEET

The following information is required as part of your response to this solicitation. Failure to complete and provide this sheet may result in finding your bid nonresponsive.

1. Qualification: The contractor must have the capability and capacity in all respects to fully satisfy all of the contractual requirements.

2. Vendor's Primary Contact:

Name: _____

Phone: _____

3. Years in Business: Indicate the length of time you have been in business providing this type of service:
_____ Years _____ Months.

4. Vendor Information:

FIN or FEI Number: _____ If Company, Corporation, or Partnership

Social Security Number: _____ If Individual

5. References: Indicate below a list of least three (3) recent references for which you have provided surgical consultant services. Include the date service was furnished and the name and address of the person the agency has your permission to contact.

1.	Company:		Contact:	
	Phone:		Fax:	
	Project:			
	Dates of Service:		\$ Value	

2.	Company:		Contact:	
	Phone:		Fax:	
	Project:			
	Dates of Service:		\$ Value	

3.	Company:		Contact:	
	Phone:		Fax:	
	Project:			
	Dates of Service:		\$ Value	

I certify the accuracy of this information.

Signed: _____ Title: _____ Date: _____

ATTACHMENT B

COMMONWEALTH OF VIRGINIA DEPARTMENT OF VETERANS SERVICES VIRGINIA VETERANS CARE CENTER

Standards for Privacy of Individually Identifiable Health Information

BUSINESS ASSOCIATE CONTRACT

The U.S. Department of Health and Human Services ("HHS") has issued regulations pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), governing the privacy of individually identifiable health information obtained, created or maintained by certain entities. As a valued BUSINESS ASSOCIATE, we will make available and/or transfer certain information, in conjunction with goods or services that are being provided by the BUSINESS ASSOCIATE to the COVERED ENTITY, which is confidential and must be afforded special treatment and protection.

THIS CONTRACT:

This Business Associate Contract ("Contract") is made as of this _____ day of _____, 2007, by Department of Veterans Services, an Agency of the Commonwealth of Virginia (herein referred to as "Covered Entity") and _____ (herein referred to as "Business Associate").

WITNESSETH:

WHEREAS, THE COVERED ENTITY will make available and/or transfer to the BUSINESS ASSOCIATE certain information, in conjunction with goods or services that are being provided by the BUSINESS ASSOCIATE to the COVERED ENTITY, that is confidential and must be afforded special treatment and protection. WHEREAS, THE BUSINESS ASSOCIATE will have access to and/or receive from the COVERED ENTITY certain information that can be used or disclosed only in accordance with this CONTRACT and the HHS Privacy Regulations.

WHEREAS, THE COVERED ENTITY and THE BUSINESS ASSOCIATE agree to limits on use and disclosure established by the Terms and Conditions of this Contract. The BUSINESS ASSOCIATE hereby agrees that it shall be prohibited from using or disclosing the information provided or made available by the COVERED ENTITY for any purpose than as expressly permitted or required by the Contract.

The Terms and Conditions of this Contract shall be effective as of _____, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions.

I. DEFINITIONS:

As used in this Contract, the terms below will have the following meanings:

- (a) *Business Associate* shall mean (name of business).
- (b) *Business Associate Contract* (BAC) means a written contract between a covered entity and its Business Associate. The contractual provisions provide that the Business Associate shall:
 - ❖ only use or disclose protected health information (PHI) as permitted under the contract and not in a manner that would violate the Privacy Standards if such actions were taken by the covered entity;
 - ❖ use appropriate safeguards to prevent use or disclosure of PHI except as permitted by the contract;
 - ❖ report any known misuse of PHI to the covered entity;
 - ❖ impose the same requirements on its subcontractors and agents;

- ❖ make PHI and an accounting of disclosures available to individuals as required by the HIPAA Privacy Standards;
 - ❖ make its internal practices, books and records relating to use and disclosure of PHI available to the Department of Health and Human Services Secretary; and
 - ❖ at termination of the contract; if feasible, return or destroy all PHI received from, or created or received by the Business Associate on behalf of the covered entity that the Business Associate still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- (c) *Covered Entity* shall mean Department of Veterans Services, an agency of the Commonwealth of Virginia.
- (d) *Disclosure* shall mean the release, transfer, provision or access to, or divulging in any other manner of information outside the entity holding the information.
- (e) *HIPAA* is the acronym for the Health Insurance Portability and Accountability Act of 1996, which is a federal law that allows persons to qualify immediately for comparable health insurance coverage when they change their employment relationships. Title II, Subtitle F, of HIPAA gives the federal Department of Health and Human Services the authority to mandate and specify the use of standards for the electronic exchange of health care data; to specify what medical and administrative code sets should be used within those standards; to require the use of national identification systems for health care patients, providers, payers (or plans), and employers (or sponsors); and to specify the types of measures required to protect the security and privacy of personally identifiable health care information. Also known as the Kennedy-Kasselbaum Bill, the Kasselbaum-Kennedy bill, K2, or Public Law 104-191.
- (f) *Individual* means the person who is the subject of protected health information and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- (g) *Individually Identifiable Health Information (IIHA)*: IIHA shall mean information that is a subset of health information, which can include demographic information collected from an individual; and
- ❖ is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
 - ❖ relates to the past, present, or future physical or mental health care to an individual; or the past, present, or future payment for the provision of healthcare to an individual; and
 - identifies the individual, or
 - with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- (h) *Interpretation*: Any ambiguity in this Contract shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.
- (i) *Memorandum of Understanding (MOU)* means an arrangement between a covered entity and its Business Associate that can be used in lieu of a BAC if it contains provisions that are sufficient to accomplish the same objectives as a BAC for safeguarding the use and disclosure of PHI. A MOU is typically used by two government agencies with a working relationship that is required by law, when it is not feasible for such agencies to carry out all of the contractual requirements of a BAC.
- (j) *Protected Health Information (PHI)* means individually identifiable health information:
- ❖ transmitted by electronic media;
 - ❖ maintained in any medium described in the definition of electronic media at 45 CFR 162.103;
 - ❖ transmitted or maintained in any other form or medium.

PHI excludes individually identifiable health information in:

- ❖ education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. 1232g; and
 - ❖ records described at 20 U.S.C. 132g(a)(4)(B)(iv). *Psychotherapy notes* means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group joint, or family counseling session and that are separated from the rest of the individuals medical record.
- (k) *Privacy Officer* means the covered entity's designated official who is responsible for the development and implementation of its HIPAA privacy policies and procedures.
- (m) *Regulatory References*: A reference in this Contract to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- (n) *Required by law* means a mandate contained in law that compels a covered entity to make a use or disclosure of protected health information and that is enforceable in a court of law.
- (o) *Required by law* includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- (p) *Secretary* shall mean the Secretary of the Department of Health and Human Services or his designee.
- (q) *Survival*: The respective rights and obligations of Business Associate under Section 8, "Effect of Termination" of this Contract shall survive the termination of the Contract.
- (r) *Treatment* means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.
- (s) *Use* means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis or such information within an entity that maintains such information.
- (t) *Catch-all definition*: Terms used, but not otherwise defined, in this Contract shall have the same meaning as those terms in 45 CFR 160.103 and 164.501.

II. GENERAL CONDITIONS:

1. PROVISIONS FOR BUSINESS ASSOCIATE CONTRACTS:

- 1.1 HIPAA privacy regulations allow Department of Veterans Services to share PHI with Business Associates who are engaged to assist in carrying out various health care activities when Department of Veterans Services has entered into a Business Associate contract with the individual Business Associate. Such contracts assure that the Business Associate will (i) use the PHI only for the purpose for which it was engaged; (ii) safeguard the information from misuse; and (iii) help Department of Veterans Services to comply with its duty to provide patients or residents with access to health information about them and a history of certain disclosures.

2. THE PARTIES:

- 2.1 Hereby agree that Business Associate shall be permitted to use and/or disclose information provided or made available from the covered entity while protecting the confidentiality and integrity of PHI required law, professional ethics, and accreditation requirements, for the following stated purposes:

- (a) Business Associate is permitted to use information if necessary for the proper management and administration of Business Associate or to carry out legal responsibilities of Business Associate.
- (b) Business Associate is permitted to disclose information received from Covered Entity for the proper management and administration of Business Associate or to carry out legal responsibilities of Business Associate, provided the disclosure is required by law; or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person immediately notifies the Business Associate of any instance of which it is aware in which the confidentiality of the information has been breached.
- (c) Business Associate is also permitted to use or disclose information to provide data aggregation services, as that term is defined by 45 C.F.R 164.501, relating to the healthcare operations of the covered entity.
- (d) Business Associate will establish and maintain appropriate safeguards to prevent any use or disclosure of the information, other than as provided for by the contract.

3. *USE AND DISCLOSURE OF PHI:*

- 3.1 Business Associate shall not use PHI otherwise than as expressly permitted by this Contract, or as required by law. However, Business Associate may use PHI for purposes of managing its internal business processes relating to its functions under this Contract.
- 3.2 Business Associate shall implement and maintain appropriate safeguards to prevent the use and disclosure of PHI, other than as provided in this Contract. Upon reasonable request, Business Associate shall give Covered Entity access for inspection and copying to Business Associate's facilities used for the maintenance and processing of PHI, and to its books, records, practices, policies and procedures concerning the use and disclosure of PHI, for the purpose of determining Business Associate's compliance with this Contract.
- 3.3 Business Associate shall maintain an ongoing log of the details relating to any disclosures of PHI it makes (including, but not limited to, the date made, the name of the person or organization receiving the PHI, the recipient's address, if known, a description of the PHI disclosed, and the reason for the disclosure). Business Associate shall, within thirty- (30) days of Covered Entity's request, make such log available to Covered Entity, as needed for Covered Entity to provide a proper accounting of disclosures to its patients.
- 3.4 Business Associate shall ensure that any agent, including a subcontractor, to whom it provides PHI received from Covered Entity, or created or received by the Business Associate on behalf of the Covered Entity agree in writing to the same restrictions, terms, and conditions relating to PHI that apply to the Business Associate in this Contract. Covered Entity shall have the option to review and approve all such written agreements between Business Associate and its agents and subcontractors prior to their effectiveness.
- 3.5 Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity available to the Secretary of DHHS or its designee, in a time and manner designated by the Covered Entity or the Secretary, for purposes of determining Covered Entity's compliance with HIPAA and with the Privacy Regulations issued pursuant thereto. Business Associate shall provide Covered Entity with copies of any information it has made available to DHHS under this section of this Contract.

- 3.6 Business Associate shall provide to Covered Entity or an Individual within thirty- (30) days of request by Covered Entity, information collected in accordance with Section 3.3 of this Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528.
- 3.7 Business Associate shall report to Covered Entity within thirty- (30) days of discovery, any use or disclosure of PHI made in violation of this Contract or any law. Business Associate shall implement and maintain sanctions for any employee, subcontractor, or agent who violates the requirements in this Contract or the HIPAA privacy regulations. Business Associate shall, as requested by Covered Entity, take steps to mitigate any harmful effect of any such violation of this Contract.
- 3.8 Business Associate shall make PHI available for amendment and correction and shall incorporate any amendments or corrections to PHI within thirty- (30) days of notification by Covered Entity.

4. ***DISCLOSURE OF PHI REQUIRED IN CONTRACTS FOR GOODS & SERVICES:***

- 4.1 When Covered Entity contract for goods or services, and disclosure of PHI is a result but not the primary function of such contractual *relationship*, the individual or Entity contracting with the Covered Entity must comply with requirements for Business Associates consistent with HIPAA regulations.
- 4.2 Each Covered Entity contract office shall ensure that all contracts executed by the Covered Entity for goods and services, which also require the Covered Entity to disclose PHI, include provisions to safeguard PHI consistent with HIPAA requirements for Business Associates.
 - ❖ Covered Entity contract offices shall administer such contracts in accordance with its standard office procedures.
 - ❖ Each Covered Entity contract officer shall consult with the Covered Entity's privacy official to resolve any issues regarding the compliance of such contracts with HIPAA provisions.

4.3 *Obligations of Covered Entity:*

- (a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.
- (b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522.
- (d) Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

5. ***EXCEPTIONS TO BAC REQUIREMENT:***

5.1 BACs are not required when:

- ❖ The Covered Entity discloses PHI to a health care provider for treatment purposes.
- ❖ The financial institution acting on behalf of the Covered Entity receives, uses or discloses PHI to process financial transactions by debit, credit or other payment card; clears checks; initiates or processes electronic fund transfers; or conducts any other activity that directly facilitates or effects the transfer of funds for compensation of health care, when such transaction is conducted by patients or residents of Covered Entities facilities.

- ❖ Other laws or regulations govern a Business Associate, and contain requirements sufficient to accomplish the purpose of the BAC.

5.2 When a Business Associate is required by law to perform certain functions or activities included in the definition of “Business Associate” on behalf of the Covered Entity, PHI may be disclosed to that entity to the extent necessary to comply with such legal mandate without entering into a BAC. In such instances:

- ❖ A MOU should be obtained; or
- ❖ The responsible staff should document the inability and reasons that a MOU has not been obtained.

5.3 When it is not possible to terminate the MOU, or impractical to include a termination clause within an MOU, the Covered Entity or a facility shall report known violations to the chief privacy officer for reporting to the Secretary of Health and Human Services.

6. **BUSINESS ASSOCIATE CONTRACT BREACH:** A BAC breach occurs whenever a Business Associate violates a material term or condition of the BAC.

6.1 When the Covered Entity becomes aware of a breach, it shall:

- ❖ Take reasonable steps to cure the breach, or
- ❖ Terminate the contract, or
- ❖ Report the breach to the chief privacy officer for reporting to the Secretary of Health and Human Services, if termination would be unreasonably burdensome (i.e. no viable alternatives are available).

“Reasonable steps” will vary with the circumstances and the nature of the business relationship and shall be taken in consultation with the chief privacy officer in the Covered Entity.

“Unreasonably burdensome” does not mean it is merely more convenient or less costly to do business with the Business Associate in breach of the contract than with other potential Business Associates.

Any whistle blowing disclosure by the Business Associate does not impose a duty on the Covered Entity to correct, cure, or terminate the relationship.

III. **TERMINATION FOR CAUSE:**

- (a) Covered Entity may immediately terminate this Contract if Covered Entity determines that Business Associate has violated a material term of this Contract. This Contract shall remain in effect unless terminated for cause by Covered Entity with immediate effect, or until terminated by either party with not less than thirty- (30) days prior written notice to the other party, which notice shall specify the effective date of the termination; provided, however, that any termination shall not affect the respective obligations or rights of the parties arising under any Documents or otherwise under this Contract before the effective date of termination. Within thirty- (30) days of expiration or earlier termination of this Contract, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form and retain no copies of such PHI. Business Associate shall provide a written certification that all such PHI has been returned or destroyed, whichever is deemed appropriate. If such return or destruction is infeasible, Business Associate shall use such PHI only for purposes that make such return or destruction infeasible and the provisions of this Contract shall survive with respect to such PHI.

- (b) Covered Entity may choose to provide an opportunity for Business Associate to cure the violation with written notice of the existence of the violation and provide Business Associate with thirty- (30) days to cure said violation upon mutually agreeable terms. Failure by Business Associate to cure said violation within the terms as mutually agreed shall be grounds for immediate termination and the provisions provided in paragraph (a) of this section shall apply.

IV. *AMENDMENT:*

Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of a court of the United States or of this state relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, Covered Entity may, by written notice to the Business Associate, amend this Contract in such manner as Covered Entity determines necessary to comply with such law or regulation. If Business Associate disagrees with any such amendment, it shall so notify Covered Entity in writing within thirty- (30) days thereafter, either of them may terminate this Contract by written notice to the other.

V. *NOTICES:*

Whenever under the Contract one party is required to give notice to the other, such notice shall be deemed given if mailed by first class United States mail, postage prepaid, to the following:

Business Associate:

Attn:

Covered Entity: Virginia Veterans Care Center

Attn: Robyn J. Wright, CPPB, VCO

Purchasing & Contracting

Notice of a change in address of one of the parties shall be given in writing to the other party as provided above.

VI. *DISPUTES:*

If any controversy, dispute or claim arises between the Parties with respect to this Contract, the Parties shall make good faith efforts to resolve such matters informally.

VII. *FEES:*

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of this Contract, each party shall bear their own legal expenses and the other cost incurred in that action or proceeding.

VIII. *ENTIRE AGREEMENT:*

The Contract consists of this document, and constitutes the entire agreement between the Parties. There are no understandings or agreements relating to this Contract which are not fully expressed in this Contract and no change, waiver or discharge of obligations arising under this Contract shall be valid unless in writing and executed by the Party against whom such change, waiver, or discharge is sought to be enforced.

IN WITNESS WHEREOF:

BUSINESS ASSOCIATE and COVERED ENTITY have caused this Contract to be signed and delivered by their duly authorized representatives, as of the date set forth above.

BUSINESS ASSOCIATE	COVERED ENTITY
<hr/> Signature	<hr/> Signature
<hr/> Printed Name	<hr/> Printed Name
<hr/> Title	<hr/> Title
<hr/> Date	<hr/> Date
<hr/>	<hr/>

**ADDENDUM TO COMMONWEALTH OF VIRGINIA
DEPARTMENT OF VETERANS SERVICES
BUSINESS ASSOCIATE CONTRACT**

THIS ADDENDUM governs the provision of Protected Health Information (PHI) (as defined in 45 C.F.R. § 164.501 by Department of Veterans Services, an Agency of the Commonwealth of Virginia (Covered Entity) and _____, (Business Associate) for the purposes set forth and pursuant to which the Business Associate is performing functions or tasks on behalf of the Covered Entity.

WHEREAS, the Covered Entity is bound by the regulations implementing the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191 (HIPAA), 45 C.F.R. Part 160 and Part 164, Subparts A and E, the Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule"); and 45 C.F.R. Part 164, Subpart C, the Security Standards for the Protection of Electronic Protected Health Information ("Security Rule");

WHEREAS, _____, as a recipient of PHI from the Covered Entity, is a "Business Associate" as that term is defined in the Privacy Rule;

WHEREAS, pursuant to the Privacy Rule and the Security Rule, all Business Associates of Covered Entities must agree in writing to certain mandatory provisions regarding the use and disclosure of PHI; and

WHEREAS, the purpose of this Addendum is to comply with the requirements of the Privacy Rule and the Security Rule, including, but not limited to, the Business Associate contract requirements at 45 C.F.R. §§164.314(a), 164.502(e), §164.504(e), and as may be amended.

NOW, THEREFORE in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

I. Definitions: Unless otherwise provided in this Addendum, capitalized terms have the same meaning as set forth in the Privacy Rule or the Security Rule.

II. Scope of Use and Disclosure by Business Associate of Protected Health Information

- (a) Business Associate shall be permitted to Use and Disclose PHI that is disclosed to it by the Covered Entity as necessary to perform its obligations under the Business Associate Contract.
- (b) Unless otherwise limited herein, in addition to any other Uses and/or Disclosures permitted or authorized by this Addendum or Required by Law, the Business Associate may:
 - Use the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of the Business Associate;
 - Disclose the PHI in its possession to a third party for the purpose of the Business Associate's proper management and administration or to fulfill any legal responsibilities of the Business Associate; provided, however, that the Disclosures are Required by Law or the Business Associate has received from the third party written assurances that (a) the information will be held confidentially and used or further Disclosed only as Required by Law or for the purposes for which it was Disclosed to the third party; and (b) the third party will notify the Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached;

- Aggregate the PHI with that of other Covered Entities for the purpose of providing the Covered Entity with data analyses relating to the Health Care Operations of the Covered Entity, the Business Associate may not Disclose the PHI of one Covered Entity to another Covered Entity without the written authorization of the Covered Entity involved; and
- De-identify any and all PHI created or received by the Business Associate under this Addendum; provided, that the de-identification conforms to the requirements of the Privacy Rule.

III. Obligations of the Business Associate. In connection with its Use and Disclosure of PHI, the Business Associate agrees that it will:

- (a) Use or further Disclose PHI only as permitted or required by this Addendum or as Required by Law.
- (b) Use reasonable and appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by this Addendum.
- (c) To the extent practicable, mitigate any harmful effect that is known to the Business Associate of a Use or Disclosure of PHI by the Business Associate in violation of this Addendum.
- (d) Report to the Covered Entity any Use or Disclosure of PHI not provided for by this Addendum of which the Business Associate becomes aware.
- (e) Require contractors or agents to whom the Business Associate provides PHI to agree to the same restrictions and conditions that apply to the Business Associate pursuant to this Addendum.
- (f) Make available to the Secretary of Health and Human services the Business Associate's internal practices, books and records relating to the Use and Disclosure of PHI for purposes of determining the Covered Entity's compliance with the Privacy Rule, subject to any applicable legal privileges.
- (g) Within (15) days of receiving a request from the Covered Entity, make available the information necessary for the Covered Entity to make an accounting of Disclosures of PHI about an individual.
- (h) Within ten (10) days of receiving a written request from the Covered Entity, make available PHI necessary for the Covered Entity to respond to Individuals' requests for access to PHI about them in the event that the PHI is the Business Associate's possession constitutes a Designated Record Set.
- (i) Within fifteen (15) days of receiving a written request from the Covered Entity incorporated any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in the Business Associate's possession constitutes a Designated Record Set.
- (j) Implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic PHI that it creates, receives, maintains or transmits on behalf of the Covered Entity, and make its policies and procedures, and documentation required by the Security Rule relating to such safeguards, available to the Secretary of HHS for purposes of determining the Covered Entity's compliance with the Security Rule.
- (k) Ensure that any agent, including a subcontractor, to whom it provides Electronic PHI agrees to implement reasonable and appropriate safeguards to protect the Electronic PHI; and
- (l) Promptly report to the Covered Entity any security incident with respect to Electronic PHI of which it becomes aware.

IV. Obligations of the Covered Entity. The Covered Entity agrees that it:

- (a) Has included, and will include, in the Covered Entity's Notice of Privacy Practices required by the Privacy Rule that the Covered Entity may Disclose PHI for Health Care Operations purposes.
- (b) Has obtained, and will obtain, from Individuals' consents, authorizations and other permissions necessary or Required by Laws applicable to the Covered Entity for the Business Associate and the Covered Entity to fulfill their obligations under the Business Associate Contract and this Addendum.

- (c) Will promptly notify the Business Associate in writing of any restrictions on the Use and Disclosure of PHI about the Individuals that the Covered Entity has agreed to that may affect the Business Associate's ability to perform its obligations under the Business Associate Contract and this Addendum.
- (d) Will promptly notify the Business Associate in writing of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI, if such changes or revocation may affect the Business Associate's ability to perform its obligations under the Business Associate Contract or this Addendum.

V. Termination.

- (a) Termination for Breach. The Covered Entity may terminate this Addendum if the Covered Entity determines that the Business Associate has breached a material term of this Addendum. Alternatively, the Covered Entity may choose to provide the Business Associate with notice of the existence of an alleged material breach and afford the Business Associate an opportunity to cure the alleged material breach. In the event the Business Associate fails to cure the breach to the satisfaction of the Covered Entity, the Covered Entity may immediately thereafter terminate this Addendum.
- (b) Automatic Termination. This Addendum will automatically terminate upon the termination of the Business Associate Contract.
- (c) Effect of Termination.
 - i. Termination of this Addendum will result in termination of the Business Associate Contract;
 - ii. Upon termination of this Addendum or the Business Associate Contract, the Business Associate will return or destroy all PHI received from the Covered Entity or created or received by the Business Associate on behalf of the Covered Entity that the Business Associate still maintains and retains no copies of such PHI; provided that if such return or destruction is not feasible; the Business Associate will extend the protections of this Addendum to the PHI and limit further Uses and Disclosures to those purposes that make the return or destruction of the information infeasible.

VI. Amendment. The Business Associate and the Covered Entity agree to take such action as is necessary to amend this Addendum from time to time as is necessary for the Covered Entity to comply with the requirements of the Privacy Rule and the Security Rule.

VII. Survival. The obligations of the Business Associate under section V.c (ii) of this Addendum shall survive any termination of this Addendum.

VIII. No Third Party Beneficiaries. Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

IX. Effective Date. **This Addendum shall be effect on _____.**

BUSINESS ASSOCIATE

COVERED ENTITY

By: _____
Print
Name: _____

Title: _____

By: _____
Print
Name: _____

Title: **Corporate Compliance Officer**

Date: _____

Date: _____
